

AN ORDINANCE 94321

APPROVING AND ADOPTING NON-RADIOACTIVE HAZARDOUS MATERIALS ROUTING REGULATIONS THROUGH AMENDMENT OF THE CITY CODE OF THE CITY OF SAN ANTONIO, CHAPTER 19, MOTOR VEHICLES AND TRAFFIC, BY ADDING A NEW ARTICLE XVI TO BE ENTITLED NON-RADIOACTIVE HAZARDOUS MATERIALS ROUTE; PROVIDING FOR PROHIBITED AND PERMISSIBLE ROUTE DESIGNATIONS, CRIMINAL AND CIVIL ENFORCEMENT AND PENALTIES; AND DIRECTING PUBLICATION.

* * * * *

WHEREAS, Federal Rules for protection of public health, safety, and welfare arising from transport of hazardous materials, determined by the United States Secretary of Transportation to be capable of posing unreasonable risk to health, safety, or property, specifically, non-radioactive hazardous materials, require comportment with Title 49 Code of Federal Regulations Part 397; and, Accordingly, State law requires cities having populations of more than 750,000 to develop a route for commercial motor vehicles carrying hazardous material on a road or highway within municipal jurisdictions, subject to approval by the Texas Department of Transportation (TxDOT); and

WHEREAS, the City Council of the City of San Antonio passed and approved a Resolution dated February 10, 2000, supporting and urging TxDOT to approve a proposed non-radioactive hazardous material route affecting the City; and

WHEREAS, all requisites of law have been fulfilled to effect establishment of such a route, including, but not limited to, such public hearings as may have been necessary for the State of Texas to implement such route, one of which hearings was hosted by TxDOT on September 6, 2000, as required by law; and thereafter, TxDOT did present to the various participating local jurisdictions the proposed route for consideration; and

WHEREAS, all political subdivisions affected by the proposed route could not agree as to the propriety of same; and

WHEREAS, as a result of the foregoing, it then became the responsibility of TxDOT to formulate and propose a route pursuant to Title 49 Code of Federal Regulations, Part 397; and

WHEREAS, on the 28th of June, 2001, the staff of TxDOT did present a proposed route formulated and adopted by such staff of TxDOT, to the Texas Transportation Commission (Commission); and

WHEREAS, the Commission being the governing board of TxDOT pursuant to Chapter 201, Texas Transportation Code, did, in an open meeting, held on the 28th day of June, 2001, approve such a route; and

WHEREAS, protection of the public health, safety, and welfare shall be served by the route and by adoption of this Ordinance empowering the City to engage in enforcement, all to the local benefit; and

WHEREAS, TxDOT has pledged funding toward signage installation on state highways for proposed non-radioactive hazardous materials route, and for which route the City shall share enforcement duties with the State of Texas and with other local jurisdictions under authority of this Ordinance and under ordinances that may be similarly undertaken in sister jurisdictions; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. For purposes of designating various public street routes upon which non-radioactive hazardous materials transport may be permissive, or prohibited, and in other cases compelled to abide, the City Code of the City of San Antonio is hereby amended by adding the following new Article VXI to Chapter 19, Motor Vehicles and Traffic, commencing at Sec. 19-600, which new Article VXI is entitled Non-Radioactive Hazardous Materials Route, set forth in its entirety as follows, and which added amendment is identified by underlined language:

ARTICLE XV. DRAINAGE EASEMENTS

Secs. 19-503-19-599. Reserved.

ARTICLE XVI. NON-RADIOACTIVE HAZARDOUS MATERIALS ROUTE

Sec. 19-600. Definitions:

Bexar County terminal means a business or other location within the boundaries of Bexar County which business or location serves as a point of origination or receipt for shipments of NRHM.

City means the City of San Antonio and that physical area within the corporate boundaries of the City of San Antonio.

Local delivery of regulated material(s) means transportation that originates in Bexar County, Texas, is bound for delivery in Bexar County, or both.

Non-radioactive hazardous materials (NRHM) means those non-radioactive materials classified as hazardous by the United States government through the Secretary of Transportation pursuant to his or her authority under 49 U.S.C.A. Sec.1801, et seq. (1976).

Non-radioactive hazardous materials (NRHM) transportation means motor vehicle transportation of non-radioactive hazardous materials in such quantities that the vehicle is required to carry and exhibit placards pursuant to Title 49, Code of Federal Regulations (CFR), Part 172.

NRHM (non-radioactive hazardous materials) vehicle means a vehicle transporting regulated materials and subject to provisions and regulations of this Article XVI.

Prohibited non-radioactive hazardous materials route means the following streets and public highways and segments of streets and public highways:

- (a) Both upper and lower highway levels, Southbound from IH 35/IH 37/US 281 interchange to the IH10/IH 35/Alamo Street interchange;
- (b) Both upper and lower highway levels, Northbound on IH 35 from the IH 10 /IH 35/US 90 interchange to the IH 10/IH 35/US 281 interchange with the exception that vehicles turning North onto IH 35 from US 90/IH 10 Westbound shall exit onto San Marcos Street (exit 154A);
- (c) Both upper and lower highway levels and both directions of IH 10 from the IH 10 interchange at the 1,000 block of Fredericksburg Road to the IH 10 /IH 35 interchange at exit 570 of IH 10;
- (d) Both directions of IH 37, from the IH35 /IH 37 /US 281 interchange to the IH 37 /Durango Street interchange.

Requiring Placards, when used to describe a vehicle, means any vehicle transporting hazardous materials in sufficient quantity to require placarding as set forth in the United States Department of Transportation Hazardous Materials Regulations 49 U.S.C.A. Sec. 1801, et seq. (1976).

Regulated materials means non-radioactive hazardous materials of the character regulated by this Ordinance and affected by this local non-radioactive hazardous materials route regulation.

Through traffic transportation means transportation of regulated material(s) that originates outside of Bexar County, Texas, and involves no deliveries or pick-ups in Bexar County.

Sec. 19-601. No person shall transport, contract, or arrange, or participate in the transport, contract, or arrangement to transport non-radioactive hazardous materials within the corporate boundaries of the city unless his / her destination or point of departure is a Bexar County terminal and unless such transport is conducted in compliance with this Article XVI.

Sec. 19-602. Mandated Permissible Routes for Local Delivery.

(a) When any NRHM vehicle (truck, trailer, motor vehicle or any other vehicle) is carrying non-radioactive hazardous material to commercial consumers, domestic consumers, gasoline service stations, bulk stations or other points of origin or destination located within the corporate limits of the city, the carrier must use the safest route available by the best use of the highest classification roadways.

(b) For purposes of local delivery, classification of roadways from highest to lowest are as follows:

Interstate highway

U.S. highway

State highway

Loop

F.M. road

Spur

Major arterial street

Minor arterial street

Collector street

Local street

(c) For purposes of local delivery, the public health and safety reason for use of highest classification roadways is to reduce the risk and severity of potential harm to persons and property that may result from a spill of regulated or hazardous material.

Sec. 19-603. Loop 1604 prohibition.

Transportation of non-radioactive hazardous materials is prohibited and unlawful on those portions of Loop 1604 that traverses the Edwards Aquifer Recharge Zone with the following exception:

Exception: Transportation of regulated materials is permissible on those portions of Loop 1604 that traverse the Edwards Aquifer Recharge Zone when NRHM vehicles are performing local delivery in North Bexar County bounded by an area one mile South of Loop 1604 and Northward to the Bexar County limit between O'Connor Road and Bandera Road.

Sec. 19-604. Prohibitions on certain freeways and the central business district on both upper and lower freeway levels.

(a) All transportation, whether local delivery or through transportation, of non-radioactive hazardous materials is prohibited and unlawful on the following roadways:

(1) Both upper and lower highway levels, Southbound from IH 35/IH 37/US 281 interchange to the IH10/IH 35/Alamo Street interchange;

(2) Both upper and lower highway levels, Northbound on IH 35 from the IH 10 /IH 35/US 90 interchange to the IH 10/IH 35/US 281 interchange with the exception that vehicles turning North onto IH 35 from US 90/IH 10 Westbound shall exit onto San Marcos Street (exit 154A);

(3) Both upper and lower highway levels and both directions of IH 10 from the IH 10 interchange at the 1,000 block of Fredericksburg Road to the IH 10 /IH 35 interchange at exit 570 of IH 10;

(4) Both directions of IH 37, from the IH35 /IH 37 /US 281 interchange to the IH 37 /Durango Street interchange.

(b) Frontage roads and access roads abutting and / or appurtenant to prohibited routes, described above at (a), are likewise prohibited to through traffic and local delivery except to the extent that a frontage or access road may qualify as best use and highest classification highway necessary to local delivery, in which case the frontage or access of a prohibited route may be used by the NRHM vehicle, but only for purposes of local delivery.

Sec. 19-605. Permissible NRHM roadway routes for through traffic.

(a) The prohibition of Sec. 19-601, pertaining to unlawful routing of regulated materials, shall not apply if the non-radioactive hazardous materials are transported on the following permissive roadways. It shall be prohibited and unlawful for through traffic transportation of non-radioactive hazardous materials to be performed on any but the following routes, which are IH 410, and those highways that spoke outward from IH 410, more specifically described as:

(1) Interstate Highway 410; and / or

(2) highways directly connecting Interstate Highway Loop 410 outward to the Bexar County limits and only on those portions of said highways outside Loop 410, being:

IH-10 from its intersection with IH 410 (near mile marker 17) to the county boundary near mile marker 545;

IH 10 from its intersection with IH 410 (near mile marker 33) to the county boundary near mile marker 594;

US-87 from its intersection with IH 410 (near mile marker 36) to the county boundary near the 14,100 block of US 87;

US-181 from its intersection with IH 410 (near mile marker 41) to the county boundary near the 9,100 block of US 181 at Calaveras Creek;

IH-37 from its intersection with IH 410 (near mile marker 41) to the county boundary near mile marker 119;

US-281 from its intersection with IH 410 (near mile marker 45) to the county boundary near the 25,600 block of US 281;

IH-35 from its intersection with IH 410 (near mile marker 26) to the county boundary near mile marker 174;

IH 35 from its intersection with IH 410 (near mile marker 53) to the county boundary near mile marker 134;

US-90 from its intersection with IH 410 (near mile marker 6) to the county boundary near mile marker 155; and

HWY 16 South from its intersection with IH 410 (near mile marker 50) to the county boundary near 23,490 Highway 16 South.

(b) All provisions of this Article pertaining to necessity for placarding of vehicles transporting regulated materials shall apply to transport of all such materials in the city, regardless of route.

- (c) It shall be an affirmative defense to a departure from the permissible route that the vehicle in question is immediately and directly destined for a location providing food, fuel, rest, safe haven, or repair. NRHM vehicles are allowed to use the access, frontage, and intersecting road ways as needed to enter and leave the location providing food, fuel, rest, safe haven or repair.

Sec. 19-606. Local delivery routes. Burden of Proof on Responsible Person to Demonstrate Best Use of Highest Classification Roadways.

- (a) It is prohibited and unlawful for any person to transport, arrange, or contract, or participate in transport, arrangement or contract for transportation of local delivery of non-radioactive hazardous materials which transport is performed on any street or roadway within the jurisdiction of the City which route is not based on the best use of the highest classification roadway. It shall be the affirmative duty of any person so engaged in transport, arrangement or contract for transport of regulated materials to determine, devise, and restrict local delivery to such restricted route for benefit of the public health, safety, and welfare. The affirmative duty includes an obligation to make best use of highest classification roadways.
- (b) Within the context of this section, "best use" of the highest classification roadway requires the responsible person to use a route that protects neighborhoods and the traveling public from nuisance, inconvenience, or disturbance of normal sensibilities of any person, as well as minimizes exposure of neighborhoods and the traveling public to risks inherent in NRHM transport. The reason for such affirmative duty is that by federal regulatory definition, NRHM is material which has been determined to pose an unreasonable risk to health, safety, or property. Such unreasonable risk places a burden of proof on the responsible person to demonstrate best use of the highest classification roadway.
- (c) A formal complaint, properly drawn and corroborated as may be required by law, shall create a rebuttable presumption that the responsible person violated the best use standard for highest classification roadway transportation or delivery of NRHM.

Sec. 19-607. Empty vehicles.

- (a) The routing prohibitions of Secs. 19-601, 602, 603, 604, 605 and the placarding requirements of this Article shall not apply to an empty vehicle that has been used previously to transport regulated materials provided the vehicle meets the requisites of subsection (b) below.
- (b) A vehicle that has transported non-radioactive hazardous materials in bulk packaging or in any other type of container and is required to be placarded

pursuant to Title 49, Code of Federal Regulations, Part 172, must and shall remain placarded when it is empty unless it is: (1) sufficiently cleaned of residue and purged of vapors to remove any potential hazard; or (2) refilled with a material requiring different placards or no placards, to such an extent that any residue remaining in the packaging is no longer hazardous.

Sec. 19-608. Placard requirements.

The operator of a vehicle used to transport hazardous materials requiring placards shall:

- (1) apply and display appropriate placards meeting United States Department of Transportation specifications on each end and each side of the vehicle; and
- (2) before operation inspect the vehicle to determine that:
 - a) the brakes and tires are in good working condition; and
 - b) the steering mechanism is in good working condition; and
 - c) the electrical wiring is well insulated and firmly secured; and
 - d) the vehicle is in a condition adequate to safely transport hazardous materials.

Sec. 19-609. Unlawful use of prohibited routes. No operator of a motor vehicle transporting non-radioactive hazardous materials, as defined in this Article, and scheduled for delivery to or from a Bexar County terminal, or found or apprehended on any public roadway in the City, shall transport those materials on any street or public highway, or segment of a street or public highway designated as a "Prohibited Non-Radioactive Hazardous Materials Route".

It is hereby declared unlawful for any person to transport or be responsible for arrangement or contract (an arranger) for transport of non-radioactive hazardous materials on any public roadway or street designated a Prohibited Non-Radioactive Hazardous Materials Route.

It is hereby declared unlawful for any person to transport or be responsible for arrangement or contract (an arranger) for transport of non-radioactive hazardous materials, which materials are required under state or federal regulation to be transported under placard, which materials are detected or apprehended in a condition of transport without appropriate placard.

Sec. 19-610. Police Department discretion and public safety.

- (a) The Police Department may temporarily suspend the operation of some or any vehicles carrying regulated non-radioactive hazardous materials, without notice whenever road, weather, traffic, or other exigent circumstances warrant such action.

- (b) The Police Department may redirect through traffic vehicles carrying regulated non-radioactive hazardous materials onto any highway or roadway, public or private, when the through traffic route is blocked for any reason, and / or in response to any exigent circumstance, which police direction for benefit of public safety shall have authority of law.

Sec. 19-611. Emergency response vehicle carrying fuel.

It shall be permissible and an affirmative defense to violation of this Article that the vehicle carrying a regulated material is carrying fuel directly to the scene of an emergency, or for a public emergency purpose, specific to the function of fueling equipment used to respond to or address the emergency.

Sec. 19-612. Prohibited parking and standing. No vehicle transporting regulated non-radioactive hazardous materials may park or stand at any location within the City of San Antonio except for purposes of loading or unloading with the following exceptions:

- (1) Vehicles parked in designated truck parking areas of locations providing food, fuel, rest, safe haven, or repair;
- (2) Vehicles parked in the parking areas of businesses engaged in the transportation, storage or production of hazardous materials.

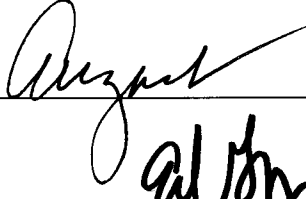
Sec. 19-613. Criminal Class C misdemeanor , civil remedy, and enforcement.

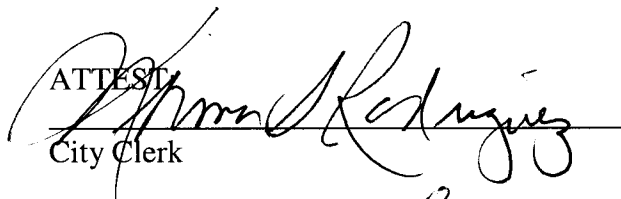
- (a) Violation of any of the provisions of this Article shall constitute an offense punishable by a fine of not less than five hundred dollars (\$500.00) and not to exceed two thousand dollars (\$2,000.00), to the extent such violation may pose a fire or public health threat. Local Government Code Sec. 54.001(b).
- (b) Both officers of the Fire Department, having citation authority under the laws of the State of Texas, and officers of the Police Department are expressly authorized to enforce the provisions of this Article, as are other peace officers with jurisdiction to enforce the laws and ordinances of the city and state on public roadways within the city.
- (c) The city shall be entitled to pursue all remedies, at law and in equity, including but not limited to injunctive relief, with attendant civil penalties as may be provided under state statute, which remedies shall be cumulative of the criminal laws, none of which shall be mutually exclusive of the other.

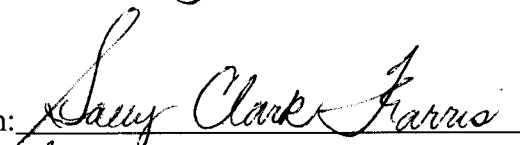
SECTION 2. This Ordinance shall be effective ten (10) days from date of passage. Criminal enforcement shall be effective as allowed by law, five (5) days following publication.

SECTION 3. The City Clerk is hereby directed to publish this Ordinance as required by law.

Passed and approved this 9th day of August, 2001.


MAYOR

ATTEST

City Clerk

Approved as to form: 
for City Attorney

01 - 29

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL CORRESPONDENCE SHEET
FIRE DEPARTMENT**

TO: Mayor and City Council

FROM: Robert Ojeda, Fire Chief

THROUGH: Terry M. Brechtel, City Manager

COPIES: J. Rolando Bono, Deputy City Manager; File

SUBJECT: Approving and Adopting Non-Radioactive Hazardous Materials Route

DATE: August 9, 2001

Summary and Recommendations

This ordinance approves and adopts the Non-Radioactive Hazardous Materials Route (hazmat route) as adopted by the Texas Transportation Commission on June 28, 2001. It creates a new article in Chapter 19, Motor Vehicles and Traffic, of the City Code of the City of San Antonio, thereby allowing the Police and Fire Departments to enforce the regulations governing the transportation of hazardous materials in the city.

Background Information

The City Council passed a resolution of support for a countywide hazmat route plan on February 10, 2000. The community plan did not receive the support of 100% of the through route jurisdictions as required by Texas administrative regulations. The Fire Chief requested that the Texas Department of Transportation (TxDOT) take up the plan as their own. After evaluation TxDOT staff decided to recommend adoption of the plan with only a modest amendment. The Fire Department supports the amendment. The plan as approved by the Commission received support from throughout the community, including the fuel transportation industry responsible for the majority of hazmat transportation in the city.

Policy Analysis

The proposed ordinance conforms to City Council direction to adopt a Non-Radioactive Hazardous Materials Route, and allows compliance with a state law that requires cities of over 750,000 have a hazmat route.

Fiscal Impact

There may be a fiscal impact related to enforcement. A determination of the estimated cost of necessary enforcement by the City will be considered in future budget cycles.

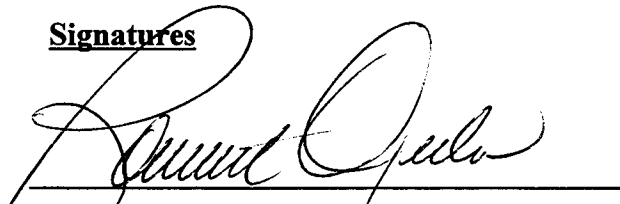
Coordination

The planning of the hazmat route has been coordinated with the City Attorney, Police Department, Public Works Department, Health Department, Planning Department, Economic Development Department, San Antonio Water Systems, Edwards Aquifer Authority, Texas Department of Transportation, Department of Public Safety, Metropolitan Planning Organization, Alamo Area Council of Governments, Local Emergency Planning Committee, representatives of the transportation industry, neighborhood representatives, all jurisdictions in Bexar County and all jurisdictions within twenty-five miles of the route. The ordinance has been coordinated with the City Attorney and TxDOT.


Supplementary Comments

The hazmat route ordinance includes provisions for routes to be taken by hazardous materials trucks transporting cargo through Bexar County without making any pickups or deliveries. It includes prohibitions on use of portions of IH 37, IH 35 and IH 10 near and Northwest of downtown and prohibitions on certain uses of Loop 1604 over the Edwards Aquifer Recharge Zone. The ordinance also addresses local delivery by requiring that hazmat trucks make the best use of the highest classification roadways when choosing delivery routes.

Signatures




Robert Ojeda
Fire Chief

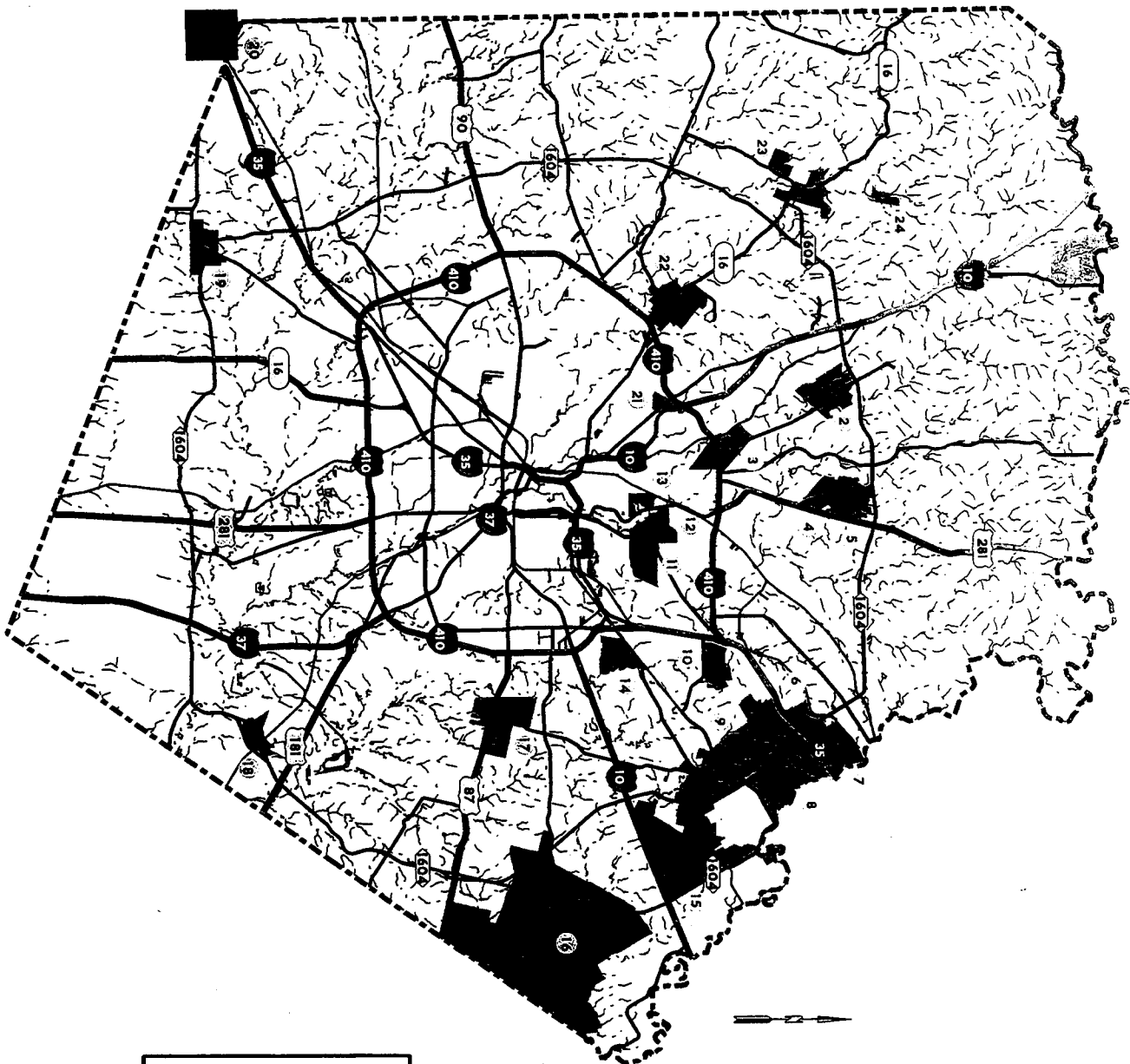


J. Rolando Bono
Deputy City Manager

APPROVED:



Terry M. Brechtel
City Manager



LEGEND OF SUBURBAN CITIES

- 1 FAIR OAKS
- 2 SHAWANO PARK
- 3 CASTLE HILLS
- 4 HILL COUNTRY VILLAGE
- 5 HOLLYWOOD PARK
- 6 LIVE OAK
- 7 SELMA
- 8 UNIVERSAL CITY
- 9 CONVERSE
- 10 WINDCREST
- 11 TERRELL HILLS
- 12 ALAMO HEIGHTS
- 13 OLIVOS PARK
- 14 KIRBY
- 15 SCHERTZ
- 16 SAINT HELENA
- 17 CHINA GROVE
- 18 ELMENDORF
- 19 SOMERSET
- 20 LITTLE
- 21 BALCONES HEIGHTS
- 22 LEON VALLEY
- 23 HELOTES
- 24 GREY FOREST

EDWARD'S AQUIFER
RECHARGE ZONE
SUBURBAN CITY
UNITS BOUNDARIES

BEXAR COUNTY NON-RADIOACTIVE HAZARDOUS MATERIALS ROUTE (NRHM)

LEGEND

- ALL NRHM TRANSPORTATION PROHIBITED
- THROUGH TRAFFIC ROUTE
- LOCAL DELIVERIES ONLY

HAZMAT ROUTING - SAN ANTONIO

